

HOUSE BILL 3339

By Matheny

AN ACT to amend Tennessee Code Annotated, Title 11;
Title 68 and Title 70, relative to the "Tennessee
Off-Highway Vehicle Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 70, is amended by deleting chapter 9 in its entirety.

SECTION 2. Tennessee Code Annotated, Title 11, is amended by adding SECTION 3 through SECTION 10 as a new, appropriately designated chapter.

SECTION 3. This chapter shall be known and may be cited as the "Tennessee Off-Highway Vehicle Act".

SECTION 4. The number of off-highway vehicle users in the state is increasing and is growing as a recognized recreational activity while the number of recreational sites is rapidly declining. In the absence of a program to manage off-highway vehicle (OHV) use, a number of consequences are accruing to the state, including environmental damage and loss of economic prospects. Therefore, the general assembly finds the need to manage OHVs to maximize economic and recreational opportunities, to protect the environment of this state, and to ensure that adequate revenue is generated for such purpose.

SECTION 5. For the purpose of this chapter, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of the department of environment and conservation;
- (2) "Department" means the department of environment and conservation;
- (3) "Off-highway vehicle" or "OHV" means any off-road motorcycles, three or four-wheel all-terrain vehicles or dune buggies;
- (4) "Owner" means the person in whose name the OHV is owned; and

(5) "Seller" means a person permitted to engage in the business of selling, offering to sell, soliciting or advertising the sale of either off-road motorcycles, three or four-wheel all-terrain vehicles or dune buggies, or any of these vehicles.

SECTION 6. The commissioner is authorized to:

- (1) Establish and implement an off-highway vehicle program;
- (2) In cooperation with sellers and governmental agencies, develop a voluntary off-highway vehicle education program for existing and potential owners and users;
- (3) Develop guidelines on the proper land selection criteria, trail design and maintenance, and best management practices for all lands used for off-highway user purposes. In this connection, the commissioner is authorized to develop public lands and manage, for specific uses, those public lands;
- (4) Study, analyze, and document the impacts of off-highway motor vehicles on surrounding habitat, including habitat loss, resource damage, noise, and vehicle emissions;
- (5) Acquire lands, through purchase or lease, for off-highway motor vehicle use. The commissioner is encouraged to use property which is currently owned or leased by the state and which is appropriate for off-highway vehicle use before acquiring lands from private landowners. OHV use shall be expressly prohibited in Tennessee wildlife resources agency (TWRA) wildlife management areas or refuges used solely for hunting, fishing or other TWRA-related activities, state forests, state parks and state natural areas unless such area has been expressly approved for such use on or before May 10, 2004, except that OHV users may be allowed to access such areas if specified by rule and regulation;
- (6) Develop and maintain a list of areas within the state that allow the use of off-highway motor vehicles;

(7) Enter into partnerships, contracts, and other management agreements with state, federal, and local governments and with private landowners to effectuate the purposes of this chapter;

(8) Make inspections and investigations, conduct studies and research, or take such other action as may be necessary to carry out the provisions of this chapter, and rules and regulations promulgated pursuant to Section 7; and

(9) Exercise general supervision over the administration and enforcement of this chapter and all rules and regulations promulgated under Section 7.

SECTION 7. The department is authorized to promulgate rules for the following purposes:

(1) To set, through rules, rider fees as established in this chapter;

(2) To establish safety requirements for riders on publicly owned or leased lands. Riders under eighteen (18) years of age shall, at a minimum, wear a helmet; and

(3) To promulgate any other rules deemed reasonable and necessary to effectuate the purposes of this chapter. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8. The funds received by the department under this chapter shall be used exclusively for the purpose of funding the operation and management of the off-highway motor vehicle program authorized under this chapter. The commissioner may use funds collected under this chapter to acquire by purchase, gift, grant, bequest, devise, or lease, the fee or any lesser interest in land, development right, easement, covenant, or other contractual right necessary to achieve the purposes of this chapter. Any future federal funds received for OHV or motorized trails shall be credited to the department for use to administer and enforce the provisions of this chapter.

SECTION 9.

(a) Except as provided in subsection (d), a violation of any provision of this chapter is a Class B misdemeanor. A parent or guardian who knowingly permits a minor to operate an off-highway vehicle in violation of this chapter commits a Class B misdemeanor. A person who commits a second or subsequent offense commits a Class B misdemeanor with a mandatory fine of two hundred fifty dollars (\$250).

(b) For any conviction of violation of a provision of this chapter, the court may order restitution for damages caused by the violator, or the court may order the violator to restore the property to a state comparable to its original undamaged state. Any restitution ordered shall be paid to the landowner or to the state if the land on which the offense occurred was owned, leased, licensed to, or in some manner under state control. State control includes, but is not limited to, control through any type of agreement or understanding with any private or governmental entity permitting land to be used in connection with the OHV program.

(c) In connection with an arrest for a violation of this chapter, the OHV may be seized and impounded in compliance with § 40-33-101 et seq.

(d) It is unlawful for any person to ride an off-highway motor vehicle upon the land of another without having first obtained the permission or approval of the owners of the land or of the person or persons in charge of the land who have authority from the owner to give such permission. A violation of this subsection (d) is a Class C misdemeanor, subject to a fine only of fifty dollars (\$50.00). Each day's violation of this subsection (d) shall be considered a separate offense; provided, that, in lieu of a fine pursuant to this subsection (d), if land is damaged, a court may order the violator to pay restitution to the landowner or to restore the property to a state comparable to its original undamaged state.

(e) The provisions of this chapter are enforceable and may be prosecuted by all law enforcement officers, including police officers, sheriffs, TWRA officers, and other peace officers charged with the enforcement of the laws of this state. The primary responsibility for the enforcement and prosecution of this chapter on private lands and on lands under local governmental ownership or control is with local law enforcement officers. The primary responsibility for the enforcement and prosecution of this chapter on public lands not under local governmental ownership or control is with state law enforcement officers, including wildlife resources officers. It is not the legislative intent that the department enforce trespass laws on private property unless the property is under state control.

SECTION 10.

(a) The rules previously promulgated under the prior Off-Highway Vehicle Act shall remain in effect until amended or repealed in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) All contracts or leases entered into prior to July 1, 2008, by the Tennessee wildlife resources agency with any entity, corporation, agency, enterprise or person pertaining to the prior Off-Highway Vehicle Act shall continue in full force and effect as to all essential terms and conditions of the contracts in existence on July 1, 2008, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of environment and conservation, unless and until such contracts or leases are amended or modified by the parties to such contracts or leases.

SECTION 11. In carrying out the purposes of this act, the department of environment and conservation shall put first and foremost the welfare of wildlife and the environment.

SECTION 12. This act shall take effect July 1, 2008, the public welfare requiring it.

